

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, October 20, 2008 in the Commissioners Boardroom, Avery County Administrative Complex, Newland, N.C.

Members Present: Kenny Poteat, Chairman; Susan Pittman, Vice-Chair; Phyllis Forbes; Scott Heath; and Dan South.

Members Absent: None

Call To Order

Chairman Poteat called the meeting to order at 3:35 p.m. Chairman Poteat welcomed Dan South back. Dan South led prayer.

No public comments.

Board Appointments

Fire Commission Vacancy

Chairman Poteat stated that at the last meeting it was the request of the Fire Commission to do some research on the bylaws of the Fire Commission. Daryl Smith advised that Michaelle Poore, County Attorney, had clarified the questions that the Fire Commission had regarding the bylaws. Chairman Poteat explained that the Fire Commission is a five member commission; two of which are selected by the Board of County Commission (county at-large); two selected by the Fire Association and the fifth member selected by the other four members of the Fire Commission.

Motion by Scott Heath and second by Dan South to fill Michael Johnson's vacancy on the Fire Commission with Mr. Gary Redding; the term being expired August 2009. Motion unanimously approved. (5-0)

Subdivision Approval - The Lodges at Eagles Nest – Loretta Smith

Loretta Smith, Ordinance Administrator, advised that the Avery County Planning Department and the Avery County Planning Board are submitting the Lodges at Eagles Nest for final approval. The overall Eagles Nest project consists of 1450 acres developed as a residential subdivision. The Lodges at Eagles Nest consists of approximately 30 acres. This section will create 36 new lots with the minimum lot size approximately 3 acres and the maximum lot size more than 10 acres. This phase has been visited by the Banner Elk Fire Department and is approved for access by emergency vehicles. The County Manager advised that there are no requirements in the bylaws for the Planning Board that this inspection be made by the fire departments but everyone would agree that this issue does have merit and possibly the Planning Board should look at whether this should be a part of approving a subdivision or just a recommendation from the fire department. Jeremiah West, Eagles Nest representative, explained that an 80 acre parcel of Eagles Nest had been approved, a 30 acre parcel of the Great Camp had been approved, and now the 300 acres of the Lodges at Eagles Nest was up for approval; this is the third phase for approval. Discussion regarding approval of subdivisions.

Motion by Susan Pittman and second by Phyllis Forbes to approve the Lodges at Eagles Nest Phase III of approximately 300 acres. Motion unanimously approved (5-0).

Recess

3 minute recess for the Chairman to sign the approval for the Lodges at Eagles Nest.

County Manager Report- Robert Wiseman

Rabies Action Team

Robert Wiseman, County Manager, stated that Jesse Greene, Toe River Health District Director, was working on the bylaws and appropriate legislation of the Rabies Action Team and hopefully by the next meeting there would be a draft for the Board to look at.

N.C. Community College System Tentative Approval for Multipurpose Facility

The County Manager advised that he was instructed to follow up with Mitchell County and Yancey County regarding the approval for future funding for the Multipurpose Building that is a vision for Mayland College and that these counties did not take action basically because this is a very futuristic proposal and the other counties did not feel they could commit a future Board to this. The County Manager stated that a letter was sent to Dr. Suzanne Owens, Mayland Community College, that stated the Avery County Board of Commissioners was in support of the project but could not commit funds at this time. Discussion regarding the tentative approval for the multipurpose facility.

Banner Elk Day Care and Puckett Property

The County Manager explained that the Board had declared the Banner Elk Day Care and Puckett Property as surplus at the last meeting and a commercial appraiser had been contacted and was asked to start the process of getting the highest and best use value of these two properties. The County Manager stated that after this process was completed that appropriate action would be taken to offer these properties for public sale. Dan South said that in April or May there had been some discussion about a local Hospice House and the need for this in Avery County. Mr. South stated that Ms. Shea, Hospice Director, had talked with the Board before about the need for a Hospice House. Mr. South questioned if maybe the Banner Elk Day Care Center could be used for this need. Mr. South stated that possibly Hospice could buy this property. The County Manager explained that the first hurdle that would need to be considered for either building to be certified as a Hospice House would have to be determined by the Division of Facilities Services out of Black Mountain, North Carolina. Dan South stated that Avery Hospice needed to be contacted first and speak with the Hospice Board regarding this issue. Phyllis Forbes asked the County Manager to call some different counties possibly Caldwell County and research the possibility of a Hospice House. Dan South advised that the renovation of the property, maintenance of the property, licensing, etc. be 100% Hospice responsibility.

Agenda Format

The County Manager stated that with the Board's approval, a standard format needs to be used to address the Board of Commissioners. This would be the same layout as the agenda sheets.

Fire Coordinator

The County Manager reported that Charlie Franklin from the Green Valley Community was selected to be the Fire Coordinator. This position will be funded in place of the Assistant Fire Marshall from this point in time through July 1, 2009. As of July 1, 2009, the salary will come out of the budget of the Fire Commission. Also, until July 1, 2009, the Fire Coordinator will use the office space of the Assistant Fire Marshall and use the Assistant Fire Marshall's vehicle.

Local Revenue Options

The County Manager advised that from a previous meeting he was instructed to get all of the data together regarding the Land Transfer Tax. One thing that has served to expedite a decision regarding the Land Transfer Tax is that last spring there was Senate Bill 1951 that went through the Senate by an overwhelming majority and went to the House of Representatives where the Speaker did not facilitate it getting on the floor before it was too late to do anything and in a "nutshell" there are individuals that want to deny the people of North Carolina the right to vote on this and there is a possibility that when the legislature convenes in February that this bill will pass. If the Board is going to make a decision on this issue, the decision needs to be made as quickly as possible because of the possibility that the right to vote on this issue will be taken away, said the County Manager. The County Manager stated that he had put together some information regarding the Land Transfer Tax. 0.4% would be paid by the seller upon transfer of real property. An inheritance or gift to family members or will related transfers would be exempt from this tax. If the people of Avery County had initiated this tax the year ending 2005 \$1,031,000 would have been generated. There are 2 million dollars worth of capital needs in the schools and a new school in Banner Elk. One million dollar revenue right now with the ad valorem taxes would equate to 3-4 cents. 51% of the sales in Avery County for the last two complete fiscal years are not permanent residents of Avery County. 73% of the people who bought property in Avery County are not permanent residents of Avery County. The Land Transfer Tax has been referred to by the NC Board of Realtors as the "home tax". The County Manager emphasized that this is not a tax on homes. The County Manager stated that if there is a recession and if property values decline between now and 2010, it will take a higher tax rate to produce an equal amount of revenue and that either the tax rate would have to be raised or services cut or the in between would be the 0.4% Land Transfer Tax. This tax could stabilize property tax rates in Avery County to where it would alleviate the burden for people on fixed incomes.

Chairman Poteat stated he was not advocating an increase in tax rates but gave an example that in Ashe County the Land Transfer Tax was voted on and defeated and so Ashe County had to pass a 3 cent property tax increase. Chairman Poteat asked Ms. Forbes just as an example, if Avery County went the route of an increased property tax, how often would this tax need to be paid. Ms. Forbes answered yearly. Chairman Poteat asked Ms. Pittman, as an example, if Avery County opted for the sales tax how often would this tax be paid. Ms. Pittman answered possibly every day or several times a day. Chairman Poteat stated that research has shown that a home is sold on average once in a lifetime and Chairman Poteat said that he had no intention of selling his home and that it would be willed to his children and no land transfer tax would be subject to this.

Chairman Poteat stated that some people would question why an election would be held in February and the answer to that question would be that Avery County could lose the right to vote on the Land Transfer Tax by mid February. Phyllis Forbes advised that this is indeed a user tax and if you do not sell your property you do not pay the Land Transfer Tax. Chairman Poteat stated that this Land Transfer Tax would be exclusively to the capital needs of each individual school facility in Avery County.

Glenn Johnson questioned if this would be the seller that paid this land transfer tax. The County Manager stated it would be the seller. Mr. Johnson stated that if the seller paid this land transfer tax it could just be passed on to the buyer in the purchase of the property.

Tommy Burleson stated that at some point in time that Avery County needs water and sewer districts. Chairman Poteat advised that it was possible the monies from the Land Transfer Tax would free up other monies.

Scott Heath advised that the voter's should have the right to decide on this Land Transfer Tax. Mr. Heath stated that it is important that these monies be additional monies and not replacement monies. Scott Heath advised that the real estate industry is a major industry of this county and provides a lot of property values which is where the tax base is. Mr. Heath said that there needs to be a certain percentage of these dollars put back into the real estate industry for promotion of the real estate industry. Dan South stated that he agreed with what Mr. Heath said and also agreed with what Tommy Burleson said about using some of the monies for utilities and that there needed to be caution in tying up these monies to just one particular thing.

Chairman Poteat advised that in his opinion, he would hope that the Board could agree to put this on the ballot in the near future. Ms. Forbes stated that one of the big tasks would be to inform the public regarding this issue. Chairman Poteat said that the ballot did not say how these monies are going to be used. The County Manager stated that no later than the first week of February the referendum needed to be voted on. The County Manager advised that there is extra money in the budget not specifically for this referendum but for a run-off election and there was not a run-off election.

Motion by Dan South and second by Phyllis Forbes that would allow the Avery County Board of Commissioners to petition the Avery County Board of Elections to hold a referendum on or before the first week of February 2009 as to whether or not a referendum should be presented to the citizens of Avery County as to whether or not a four tenths of 1% Land Transfer Tax should be presented to the registered voters of Avery County.

Scott Heath reiterated that he did not like the fact of not giving the voters of Avery County the opportunity to decide on the Land Transfer Tax and that the citizens of Avery County should decide on this. Chairman Poteat stated it was his opinion that Avery County will lose the right to vote on this issue in the near future.

Motion unanimously approved.

Chairman Poteat thanked the Board for giving the people of Avery County the right to vote on the Land Transfer Tax.

County Attorney Report – Michaelle Poore

The County Attorney advised that she did not have anything to bring to the board's attention at this time.

Resignation of Dan South

Dan South read aloud a statement:

"Five months ago I accepted a job opportunity that took me away from Avery County. I did not know what lay ahead for my family and me. I asked you to allow me the time to determine if everything associated with this job would work out. Now that I have been on the ground and I understand and have experienced this position, I am confident that I will remain there for the foreseeable future. I have also learned that the current state of the telecommunications infrastructure in the remote areas of Afghanistan is not capable of establishing a video conference link up of the quality required for me to participate in monthly commissioner's meetings. Even though we have E mail and telephone, the internet service does not have the band width to accommodate a three hour video teleconference. Therefore, effective at the close of this meeting I will resign from the Avery County Board of Commissioners. I do so with a very heavy heart. I am honored and humbled to have served on this Board and to have represented the citizens of Avery County. I thank you for the opportunity and I am proud to have been a member of this Board and I am proud of the many things we accomplished for Avery County. Over the past months a lot of newspaper print has been directed at me. Most was based on untruths and pure emotions. I believe that the citizens of Avery County deserve much better than this type of gutter politics. This reminds me of what we see and detest at the national level. Avery County is above this and I respectfully ask that all of us put this issue behind us so we can move on with conducting the business of our county. With the

current national and state economic crisis, this Board needs to be focused on what is best for Avery County and not be distracted by politics. I want to thank each member of this Board, the county staff especially Mr. Wiseman, Cindy and Sondra for their support of keeping me involved in the County's business. I know that took a lot of extra effort on their part. I thank each of you for your friendship and your professional courtesies you have given me. Avery County is very fortunate to have people of your caliber in our service. To the citizens of Avery County, thank you for allowing me to serve you. I am very humbled by your support. For the many of you who have sent me words of encouragement and support I am deeply touched by your kindness. Though you expressed a desire for me not to resign, I believe in my heart it is in the best interest of Avery County that I do so. We need someone sitting in this chair discussing the issues and working toward the best possible solution. I now know that the technology does not exist in Afghanistan for me to be able to do this. I want to ask the Republican Executive Committee to use the 2006 election results to nominate and select a candidate to fulfill the remainder of my term. I believe selecting the person who received the next highest number of votes and is willing to serve would be the fairest method and would be in line with the votes and desires of our citizens. Finally, there is no higher honor than to be called to serve your fellow man. You the citizens of Avery County have given me this honor. I thank you and I trust that I have met your expectations. When you asked me to serve two plus years ago, no one knew what the future held. I had no idea that I would be asked to serve our nation again. I am pleased to be serving our Nation with the US Army training the Afghanistan National Army so that it may secure the peace and defend the people of Afghanistan. I will always be grateful and respectful of the trust you placed in me as one of your commissioners. I ask for your prayers for my family, as Carol and Damon remain here in the County and Derek and Danny both serve our Nation in Iraq. I know this Board will not miss a beat with my resignation. As I am only a minute part of this much greater institution called the people of Avery County. I thank you for allowing me to be a part. It is my prayer that God will continue to bless this beautiful place we call home. Thank you for your support and I love each and every one of you. It has been a hard decision but I believe it is where God wants me to go and I believe I am doing what He wants me to do. Mr. Chairman, thank you for allowing me this opportunity to speak. "

Chairman Poteat stated that as Chair he would accept Mr. South's resignation.

Agenda Consent Items

Adopted by Consensus of the Board.

Upcoming Meetings

Chairman Poteat stated that there may be a Special Meeting on the Land Transfer Tax before the November 3, 2008 regular meeting.

Adjourn

**Motion by Susan Pittman and second by Phyllis Forbes to adjourn this meeting at 5:20 p.m.
Motion unanimously approved.**

**Kenny Poteat, Chairman
Avery County Board of Commissioners**

ATTEST: _____
Cindy Turbyfill, Clerk